



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

H/4/Reply
PATENT
Brief
9/12/02
Appeal No. REC'D *Hart*
SEP 09 2002

Application No.: 09/698,920
Filing Date: October 27, 2000
Applicant: Meredith et al
Group Art Unit: 3724
Examiner: K. Peterson
Title: GUARD AND CONTROL APPARATUSES
FOR SLIDING COMPOUND MITER SAW
Attorney Docket: 0275A-000168/DVB

TECHNOLOGY CENTER 4370

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

APPELLANT'S REPLY BRIEF

The following comments are submitted in response to the Examiner's Answer
mailed July 16, 2002.

The Examiner, in making the rejection of claims 37-58, cites Kumasaka et al '416 for disclosing a fixed guard 4 and a movable guard 9. The Examiner acknowledges that Kumasaka et al '416 does not have an arbor cover. The Examiner cites Cotton et al '022 for disclosing a cover 6. However, Cotton et al '022 discloses a single movable guard or element 1, which substantially covers the blade and the entirety of which pivots about a pivot pin inserted through openings 14, 15 and boss 16, as best shown in Figure 5 (see col. 1, lines 35-38). The cover 6 is mounted to the movable guard 1.

The issues regarding the incorporation of an arbor cover on a guard assembly having both a fixed and a movable guard are not the same as those encountered when incorporating an arbor cover on a guard assembly with only a movable guard. In the movable guard 1 of Cotton et al '022, the opening 5 is provided to allow an operator access to a shaft of the saw blade because the movable guard 1 covers substantially all of the blade. The cover 6 closes the opening 5. However, there is no motivation in Cotton et al '022 to utilize a cover as disclosed for a guard assembly having both a fixed guard and a movable guard, as claimed. The Examiner states that "Cotton designed an arbor cover (6) pivotable over the guard hole to protect the operator from the spinning arbor" (See Examiner's Answer, pages 5 and 6), and the Examiner uses this as the motivation for the combination of references. However, there is no teaching or suggestion in Cotton et al for this proposed motivation. Applicants submit that the cover 6 is provided to prevent sawdust from being sprayed through the hole 5 in the guard 1 that otherwise covers the entirety of the blade. Therefore, to the extent that the Examiner's motivation for the combination of references is improper, it also is indicative of the impermissible hindsight utilized in reconstructing Applicants' invention.

In view of the above presented discussion, Applicants believe that the pending claims are patentably distinguishable over the art cited by the Examiner. Accordingly, Applicants respectfully request that this Board reverse the final rejection of claims 37-58.

With regard to claims 39, 42, 47 and 50, Applicants note that these claims include the limitation of "said movable guard is disposed over said stationary guard." The Examiner acknowledges that Kumasaka et al '416 does not disclose the movable guard over the stationary guard. However, the Examiner takes official notice that this would

have been an obvious modification. Applicants acknowledge that movable guards extendable over a fixed guard are known in the art. However, Applicants submit that the modification of Kumasaka et al '416 to make the movable guard 9 disposed over the fixed guard 4 is not obvious. The Examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well known" in the art (MPEP 2144.03). However, an Examiner may not take official notice as to a determination of obviousness. The fact that a feature is well known in the art is not dispositive of whether a modification of a reference to include that feature is obvious. In particular, the Examiner's proposed modification would require more than an obvious redesigning of the fixed guard 4, the pivot assembly for the movable guard 9 and the vacuum port of the fixed guard 4 of Kumasaka et al '416. Furthermore, the Examiner's stated motivation for the combination, that it would have been obvious "since it is known to work well either way," is improper. Therefore, claims 39-44 and 47-52 should be allowable for these additional reasons.

If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: August 30, 02

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HDP/SB/21 based on PTO/SB/21 (08-00)

AP/3724

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TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

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First Named Inventor	Meredith et al	
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Examiner Name	K. Peterson	
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ENCLOSURES (check all that apply)		
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<input type="checkbox"/> Amendment / Response	<input type="checkbox"/> Licensing-related Papers	<input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
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<input type="checkbox"/> Response to Missing Parts/ Incomplete Application	Remarks	The Commissioner is hereby authorized to charge any additional fees that may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 08-0750. A duplicate copy of this sheet is enclosed.
<input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Harness, Dickey & Pierce, P.L.C.	Attorney Name Ryan W. Massey	Reg. No. 38,543
Signature	<i>Ryan W. Massey</i>		
Date	August 30, 2002		

CERTIFICATE OF MAILING/TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, or facsimile transmitted to the U.S. Patent and Trademark Office on the date indicated below.

Typed or printed name	Ryan W. Massey		
Signature	<i>Ryan W. Massey</i>	Date	8-30-02